



California Fair Political Practices Commission

April 14, 1987

James P. Botz
Sonoma County Counsel
County Administration Center
575 Administrative Drive, Room 116A
Santa Rosa, CA 95401-2881

Re: Your Request for Advice
Our File No. A-87-083

Dear Mr. Botz:

You have written requesting further advice regarding our March 3, 1987, letter involving application of the Political Reform Act^{1/} to grand jurors.

QUESTION

Must grand jury conflict of interest codes contain disclosure categories which require disclosure of economic interests with ties to cities, special districts, school districts, redevelopment agencies, joint powers agencies and housing authorities?

CONCLUSION

Grand jury conflict of interest codes must require disclosure of economic interests with ties to those governmental agencies which it will investigate if the decisions of the grand jury may foreseeably have a material financial effect on these economic interests. This determination should be made at the local level.

FACTS

On March 4, 1987, the Commission sent a letter to counties requesting that they begin the process of adopting conflict of interest codes for grand juries. An enclosure with that letter described disclosure categories which the Commission indicated it generally would consider to be adequate. Subsections (B),

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

James P. Botz
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(C) and (D) of the disclosure categories focused on county government and county employees. You have pointed out that grand jury civil investigative powers also extend to cities, special districts, school districts, redevelopment agencies, joint powers agencies and housing authorities. (Penal Code Sections 925(a) and 933.1.) You have asked whether the Commission's suggested disclosure categories should include disclosure related to these other governmental agencies.

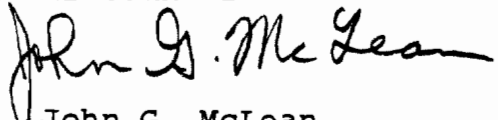
ANALYSIS

Conflict of interest codes must require disclosure of economic interests (investments, interests in real property and sources of income) which may foreseeably be affected in a material manner by any decision made or participated in by the designated employee. (Section 87302(a).) As we indicated in our March 4 letter, the Commission has chosen to leave the determination of proper disclosure categories to the code reviewing body in each county.^{2/} The Commission recognizes that the scope of the grand jury's investigations differs from county to county. Thus, the Commission's suggested categories were designed to serve as a minimum level of appropriate disclosure. For those counties whose grand juries have historically engaged in a broader review, such as your question poses, broader disclosure categories would be appropriate.

If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh

^{2/} In your letter, you questioned the Commission's conclusion that the proper code reviewing body for grand jury conflict of interest codes is the board of supervisors. The basis for that conclusion is set out in detail in the Commission's letter to the Honorable Eugene T. Gualco, Sacramento Superior Court Judge, dated July 23, 1986 (copy enclosed).

A-87-083

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COUNTY COUNSEL

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March 9, 1987

Ms. Diane M. Griffiths
General Counsel
California Fair Political
Practices Commission
P.O. Box 807
Sacramento, CA 95804-0807

Re: Conflict of Interest Codes for Grand Jurors

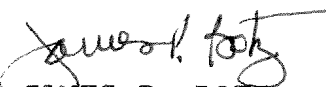
Dear Ms. Griffiths:

Thank you for the copy of your letter of March 4 to the Presiding Judge of the Amador County Superior Court concerning the application of the Political Reform Act to grand jurors. I had always understood that grand juries were part of the Superior Court which in turn, of course, is an agency of the State and thus the code reviewing body should be the Fair Political Practices Commission rather than local boards of supervisors (who are, of course, objects of the grand juries' civil investigative efforts).

In any event, I noticed in your enclosure entitled "Disclosure by Grand Jurors" under (B), (C) and (D) that those disclosure categories are focused on county government and county employees notwithstanding the provisions of Penal Code §925(a) and §933.1 which include in a grand jury's civil investigative jurisdiction cities, special districts, school districts, redevelopment agencies, joint powers agencies and housing authorities.

Before I draft a code for our grand jury, I would appreciate hearing from you on whether you agree that a grand jury conflict of interest code should be broadened to include those additional areas of potential conflict.

Very truly yours,


JAMES P. BOTZ
County Counsel

JPB:dlb
cc: District Attorney
County Administrator
Presiding Judge, Superior Court
Superior Court Administrator
Foreman, 1987 Grand Jury



California Fair Political Practices Commission

March 16, 1987

James P. Botz
Sonoma County Counsel
County Administration Center
575 Administration Dr., Room 116A
Santa Rosa, CA 95401

Re: 87-083

Dear Mr. Botz:

Your letter requesting advice under the Political Reform Act was received on March 13, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John G. McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh



California Fair Political Practices Commission

July 23, 1986

Honorable Eugene T. Gualco
Presiding Judge
Superior Court, County of Sacramento
720 Ninth Street
Sacramento, CA 95814-1380

Re: Financial Disclosure of Grand
Juries

Dear Judge Gualco:

Thank you for your thoughtful letter regarding financial disclosure by grand jurors. Unfortunately, it was received too late for consideration by the Commission at its June 10, 1986, meeting. At that meeting, the Commission carefully considered the many communications which it had received from persons interested in the topic of financial disclosure by grand jurors.

The Commission, by a vote of 3-2, directed the staff to advise everyone concerned that it is the Commission's view that grand jurors should file some form of financial disclosure at the beginning and at the end of their terms. However, none will be required until the Commission has considered the matter further.

Upon receipt of your letter, the staff determined that further review of its legal conclusion regarding coverage of grand jurors was warranted. That is the reason for the delay in this response. After carefully reviewing the matter, it remains the staff's conclusion that grand jurors are covered by the law; however, given the issues you have raised, perhaps the Board of Supervisors rather than the Superior Court is the appropriate code reviewing body for the grand jury. Our legal analysis follows.

Prior to Chapter 727, Stats. 1984 (effective July 1, 1985), both Government Section 82041 ("Local Government Agency") and Section 82049 ("State Agency") included the following language in their respective definitions: "but does not include any court or any agency of the judicial branch of government."

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Otherwise, both definitions were all-inclusive, and now read as follows:

"Local government agency" means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

Section 82041.

"State agency" means every state office, department, division, bureau, board and commission, and the Legislature.

Section 82049.

Hence, those entities which are governmental in nature were always covered unless excluded as being a "court or any agency of the judicial branch of government."

Chapter 727 eliminated the exclusionary language for "courts or any agency of the judicial branch of government." Therefore, any entity which is governmental in nature is currently covered, as there is no remaining categorical exclusion.

Prior to Chapter 727, the definition of "public official" contained in Section 82048 read as follows:

"Public official" means every member, officer, employee or consultant of a state or local government agency.

Chapter 727 amended Section 82048 to read as follows:

"Public official" means every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government. "Public official" also does not include members of the Board of Governors and designated employees of the State Bar of California, members of the Judicial Council, and members of the Commission on Judicial Performance, provided that they are subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.

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As can be seen, the definition is all inclusive with the exception of certain, very explicit exclusions. Grand jurors are not among those who are excluded. Grand jurors are clearly members of a local government agency and are covered by the Act's Conflict of Interest provisions. Section 87100.

Lastly, there is the issue of disclosure pursuant to a conflict of interest code. Codes are required to be adopted for public agencies. Sections 87300, et seq. Under those codes, designated employees are required to make certain appropriate disclosures. Section 87302. The term "designated employee" is defined in Section 82019. That definition also has certain explicit exclusions, to wit:

"Designated employee" does not include ... any unsalaried member of any board or commission which serves only an advisory function....

The testimony and other input received by the Commission at its June 10 meeting convinced the Commission that grand juries do, in fact, have an impact upon governmental decisions and are not purely advisory in nature. Cf. Commission on Calif. State Gov't. Org. & Econ. v. FPPC (1977) 75 Cal. App. 3d 716.

The Commission also directed the staff to prepare a proposed regulation to be considered by the Commission at a future meeting. You will be provided notice and an opportunity for further input at that time. The regulation will propose minimal, statewide standards for grand juror disclosure and will establish the time and manner for filing. However, local jurisdictions will be permitted to expand upon the minimum disclosure requirements if it is deemed warranted due to the level and diversity of a particular grand jury's activities.

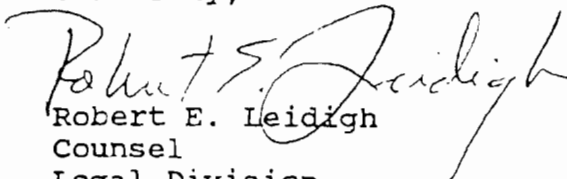
The Commission staff will be available to assist local jurisdictions in formulating the grand jury's Conflict of Interest Codes once the regulation has been adopted.

While the requirement of disclosure by grand jurors will not take effect for some time, because it may become operative during the upcoming term, the Commission directed the staff to alert you to this possibility so that new grand jurors can be made aware.

Honorable Eugene T. Gualco
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If you have any questions, please call Jeanette Turvill of the Commission staff, at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:JG:plh